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D.B. CIVIL WRIT PETITION NO.2975/2001
[KRISHNA PAL SINGH VS. UOI & ANR.]

Date of Order : 12.07.2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr.H.R.Soni for the petitioner.
Mr.Kamal Dave for the UOI.

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Heard learned counsel for the parties.

An application has been moved on behalf of the petitioner that the petitioner had died during the pendency of the appeal and since the legal representative claim to the emoluments of the post from which the petitioner had been reverted, survive as their personal right, the right to sue survive in them as legal representatives of deceased petitioner they may be brought on record as petitioner.

The application is not opposed.

Accordingly, the application for substituting the legal representatives of petitioner Krishna Pal Singh on record is allowed. Name of petitioner No.1 Krishna Pal Singh is to be deleted and in his place name of his legal representatives named

in the application may be substituted as petitioners. Amended cause title, if not already filed may be filed.

We have also considered the submissions of learned counsel for the parties on merit.

The controversy in the present case is that according to the petitioner he was initially appointed against the vacancy in Group 'C' post as a casual worker. At the time of regularisation, he was regularised on Group 'D` post and has filed original application before the Tribunal praying that he ought to have been regularised on Group 'C' post only.

The Original Application was dismissed by the Tribunal in view of the fact that he has been regularised on Group 'D' post and he was initially appointed as casual worker. It was found that merely continuing on Group 'C' post as casual worker does not entitle him for regularisation on Group 'C' post. Hence this petition.

While admitting the petition the interim order granted in favour of the petitioner, he continued on higher post of Group 'C' until he died.

Learned counsel for the respondent further submits that in view of the Pension Rules the retiral benefits available to his family shall be on the basis of last drawn emoluments on the higher post in Group 'C'. Hence the question of any reduced entitlement of emoluments to which the substituted petitioner are entitled does not survive inasmuch as the deceased had drawn the emoluments of the higher post on which he was continued under the orders of the Court and having died on that higher post, his retiral dues will also fall due on the basis of emoluments of the higher post.

The learned counsel for the petitioners sought to urge that still the promotion of the deceased to the higher post could be for consideration. However, learned counsel was also candid enough to say that the requisites of the promotional post will have to be filled by the deceased incumbent before his case can be considered which is now not possible.

In that view of the matter no relief can be granted about promotion of deceased petitioner's right to higher post. So far as entitlement of his legal representatives to the retiral benefits on the basis of emoluments lastly drawn by the deceased of the post held by him at the time of his death, the same is not impaired.

Hence the petition has become infructuous and the same is hereby dismissed as such.

No costs.

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA)A. C.J.

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